

File No. 00-IH-0283  
NAL/Acct. No. 200132080019/MG  
FRN 0003-0174-23

**Adopted:** January 18, 2002

**Released:** January 28, 2002

By the Commission:

1. In this *Memorandum Opinion and Order* we deny Citicasters Licenses, Inc.’s<sup>1</sup> (“Citicasters”) petition for reconsideration of our dismissal of its application for review of a *Forfeiture Order* issued by the Chief, Enforcement Bureau.<sup>2</sup> Citicasters’ application for review challenged for the first time the Bureau’s imposition of a \$25,000 forfeiture based upon Citicasters’ unauthorized assumption of control of WBTJ(FM), Hubbard, Ohio, in violation of section 310(d) of the Communications Act of 1934, as amended, (“Act”) and section 73.3540 of the Commission’s rules (“rules”).<sup>3</sup> We dismissed Citicasters’ application for review pursuant to section 1.115(a) of the rules

<sup>3</sup> 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540. In addition, we note that the call sign of WBTJ(FM) has been changed to WRBP(FM). The licensee of the station, Stop 26-Riverbend, Inc. filed an opposition to Citicasters' petition for reconsideration. Stop 26-Riverbend, Inc. was not a party to the forfeiture proceeding, and its opposition will be dismissed.

because Citicasters did not demonstrate good cause for its failure to participate in the forfeiture proceeding prior to the filing of its application for review. Citicasters contends, on reconsideration, that it was not required to make a good cause showing, and thus that our dismissal of its application for review on procedural grounds was erroneous. For the reasons set forth below, we deny Citicasters' request for reconsideration.

2. Citicasters argues that, as the target of the forfeiture proceeding, it is a party to the forfeiture proceeding, and thus is exempt from the good cause showing required by section 1.115(a). Citicasters claims that the Commission has specifically limited the good cause requirement of section 1.115(a) to non-parties that participate in a proceeding for the first time by filing an application for review of a decision made under delegated authority. We disagree.

### DISCUSSION

3. As a preliminary matter, we note that the good cause requirement of section 1.115(a) applies on its face to all "persons," not just non-parties. The precedent cited<sup>4</sup> does not support Citicasters' assertion that a party is exempt from the good cause requirements of section 1.115(a), despite the plain language of the rule. The cited cases all involve a non-party that sought review of an action taken by the delegated authority without participating earlier. Thus, this precedent does not specifically address the applicability of 1.115(a) when a party fails to contest the delegated authority's decision prior to filing an application for review. Nor do these cases rule that parties are not subject to the good cause requirements of section 1.115(a).

4. Citicasters also cites the language of the Commission's rule for dealing with petitions for reconsideration, section 1.106(b)(1), which requires a non-party to show good cause if it fails to participate prior to requesting reconsideration of the delegated authority's action. Section 1.106(b)(1) imposes no similar requirement on a party. Citicasters argues that the Commission has found the good cause requirement of section 1.115(a) to be "similar" to the good cause requirement of section 1.106, and thus that the good cause requirement of both rules is applicable only to non-parties.<sup>5</sup> However, the plain language of the two rule sections differs – section 1.115(a) applies to all "persons" while section 1.106(b)(1) applies only to non-parties. The cases cited by Citicasters do not address this, or specifically rule on the issue of whether a party is exempt from the good cause requirement of section 1.115(a) despite the language of the rule.<sup>6</sup>

---

<sup>4</sup> *Family Stations, Inc.*, 12 FCC Rcd 11779 (1997); *Local Exchange Carrier Line Information Database*, 8 FCC Rcd 2957 (1993); *Indianapolis Telephone Company*, 2 FCC Rcd 2893 (1987); *Pan American Satellite Corporation*, 60 RR 2d 398 (1986); *Wayne State University*, 53 FCC Rcd 697 (1975).

<sup>5</sup> Citicasters cites *Wayne State University*, *supra*, which addresses a pleading filed with the Commission styled as both an application for review or a petition for reconsideration. The pleading was filed by a non-party that had not presented its arguments to the delegated authority. The decision states that both 1.115 and 1.106 require non-parties to demonstrate good cause if the non-party did not participate earlier. Citicasters also cites *Heritage Cablevision Associates of Dallas, L.P.*, 7 FCC Rcd 4192 (1992), which notes that both 1.115(a) and 1.106(b)(1) have similar good cause requirements for non-parties.

<sup>6</sup> Section 1.106(b)(1) provides:

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section [applicable to petitions for reconsideration of the Commission's denial of an application for review], any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

5. Alternatively, Citicasters argues that it did previously participate in the proceeding. In this regard, Citicasters states that it responded to the Bureau's letter of inquiry and that the Bureau addressed this response in the *Notice of Apparent Liability* ("NAL") proposing a forfeiture based on its apparent violation of the statute and the Commission's rules. However, a forfeiture proceeding commences when a notice of apparent liability is issued, giving the person against whom the notice has been issued the opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>7</sup> Citicasters did not respond to the Bureau's NAL. Thus, we disagree with Citicasters' argument.

### CONCLUSION

6. For reasons that are unclear, Citicasters did not respond to the Bureau's NAL. Instead, it responded in the first instance to the Commission in an application for review of the Bureau's default forfeiture order. This is not the way the Commission's rules work. The target of a Bureau NAL is supposed to give the Bureau the opportunity to address its arguments before raising them with the Commission.<sup>8</sup> Citicasters did not do so. Accordingly, we affirm our prior dismissal of the application for review.

### ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED That, Citicasters' Motion for Leave to File a supplement to its application for review IS HEREBY DENIED and the Supplement to Application for Review filed October 29, 2001 IS HEREBY DISMISSED.

8. IT IS FURTHER ORDERED That, pursuant to section 1.106 of the rules, 47 C.F.R. § 1.106, Citicasters Licenses, Inc.'s Petition for Reconsideration of the dismissal of its application for review of the Forfeiture Order for NAL No. 200132080019/MG IS HEREBY DENIED.

9. IT IS FURTHER ORDERED That the Opposition to Citicasters' petition for reconsideration, filed September 6, 2001 by Stop 26-Riverbend, Inc., IS HEREBY DISMISSED, and Citicasters' reply to this opposition IS DISMISSED AS MOOT.

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the

---

(...continued from previous page)

Section 1.115(a) provides:

(a) Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. Any person filing an application for review who has not previously participated in the proceeding shall include with his application a statement describing with particularity the manner in which he is aggrieved by the action taken and showing good reason why it was not possible for him to participate in the earlier stages of the proceeding. Any application for review which fails to make an adequate showing in this respect will be dismissed.

<sup>7</sup> 47 U.S.C. §503(b); 47 C.F.R. § 1.80(e)(providing that a forfeiture proceeding may be initiated either by issuing a notice of apparent liability or a notice of opportunity for hearing). See generally *WXTV License Partnership, G.P.*, 15 FCC Rcd 3308, 3317 ¶25 (2000) and *Cable Vision Systems Corporation*, 15 FCC Rcd 3269(2000)(*Notice of Apparent Liability*) (Commission issues (1) a decision in a complaint proceeding and (2) a *Notice of Apparent Liability* growing out of the complaint as separate matters on the same day). Additionally, Citicasters argues that it participated in the forfeiture proceeding by responding to a letter filed by Stop 26-Riverbend, Inc., the licensee of WBTJ(FM), prior to the expiration of the 30 day period following issuance of the NAL. That letter opposed Stop 26-Riverbend, Inc.'s request for a cease and desist order as an additional enforcement step. It did not, however, respond to the NAL.

<sup>8</sup> In this regard, as noted in our prior order, some of Citicasters' arguments in the Application for Review were different than those contained in its response to the inquiry letter arising from the complaint, in violation of section 1.115(c) of the rules. See also note 1, *supra*.

Commission's rules<sup>9</sup> within 30 days of the date of the release of this *Memorandum Opinion and Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.<sup>10</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>11</sup>

11. IT IS FURTHER ORDERED That a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested to Citicasters Licenses, Inc., 50 E. RiverCenter Blvd., 12<sup>th</sup> Floor, Covington, KY 41011 and to Citicasters' counsel, Marissa G. Repp, Esq., Hogan & Hartson, L.L.P., 555 13<sup>th</sup> Street, N.W., Washington, DC 20004-1109.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

---

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 47 U.S. C. § 504(a).

<sup>11</sup> See 47 C.F.R. § 1.1914.